SUPREME COURT OF THE UNITED STATES.

No. 64.

ISAAC BRADLIE & JOHN GIBBONS, PLAINTIFFS IN ERROR,

VERSUS

THE MARYLAND INSURANCE COMPANY, DEFENDANTS IN ERROR.

IN ERROR TO CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Style of the Circuit Court,	1	3.
Writ,	1	3
Declaration,	2	3
Marshal's Return,	9	6
Rule Plea,	9	6
Plea and Issue,	11	7
Jury,	11	8
Verdict,	12	8
Judgment,	12	8
Defendants' Exception,	13	9
Order for Insurance, Nov. 22d, 1832,	13	9
Policy,	14	9
Notice of Abandonment 22d April, 1833,	18	11
Letter from Capt. Snow to J. Bradlie 25 March, 1833,	19	11
Reply of the defendants to the notice of Abandonment,	20	12
Libel for Salvage in the District Court of Louisiana,	21	12
Order to issue admiralty process,	23	14
Admiralty process,	23	14
Claim and answer of Isaac Bradlie,	26	15

INDEX—Continued.

	Original.	Print.
Decree for Salvage,	27	16
Letter from Capt. Snow to J. Bradlie, dated 31 March 1833,	28	16
" from same to same, dated 8 April 1833,	29	16
" from same to same, " 25 " "	29	17
" from same to same, " 9 May "	30	17
" from same to same, " 14 "	31	17
" from same to same, " 26 " "	32	18
" from same to same, " 3d June, "	32	18
" from same to same, " 12 " "	33	19
" from same to same, " 21 " "	34	19
" from same to same, " 29 " "	34	19
" from Harrison, Brown & Co., to Wm. Howell and Son, dated 29th May, 1833,	35	20
Record in the District Court of the United States for the District of Maryland, on the Bottomry Bond,	37	21
Libel,	37	21
Bottomry Bond,	40	22
Decree,	44	25
Receipt for the amount of the claim,	45	25
Petition of F. Snow against the proceeds of the brig,	46	25
Decree on the petition,	48	27
Receipt,	49	27
Petition of J. Fearson and Jo. Hall	49	27
Decree on the Petition,	50	28
Letter from the defendants to Wm. Howell & Son, Feb'y 5, 1834,	51	28
Evidence of Captain Snow,	52	29
Evidence of Jno. B. Howell,	55	31
Letter from the defendants to Wm. Howell & Son, Sept. 24, 1833,	56	31
Reply to the above,	57	32
Order for Insurance 19 September, 1834,	58	32
Order for Insurance 4 November, 1834,	58	32
Order for Insurance 6th January, 1834,	59	32
Evidence of Sam'l Thompson,	59	33
Remarks of D. Winchester,	60	33
Evidence of Thomas B. Adair,	60	33
Evidence of Capt. Wm. A. Tucker,	60	33
Further evidence of Capt. Snow,	61	34
Evidence of the Deputy Collector at Baltimore,	62	34
Defendants' first prayer,	63	35
Defendants' second prayer,	63	35
Defendants' third prayer,	64	35
Defendants' fourth prayer,	64	35
Instructions of the Court,	64	35
Plaintiffs' first exception,	66	36
Plaintiffs' second exception;	66	36
Writ of Error,	68	37
Bond,	69	38
Citation,	70	38

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first day of November, in the year of our Lord one thousand eight hundred and thirty-six:

Present: the Honorable

ROGER B. TANEY, Chief Justice of the Supreme Court of the United States.
UPTON S. HEATH, Judge of Maryland district.
NATHANIEL WILLIAMS, esquire, Attorney.
NICHOLAS SNIDER, esquire, Marshal.
THOMAS SPICER, Clerk.

Among other were the following proceedings, to wit:

ISAAC BRADLIE & JOHN GIBBONS
vs.
THE MARYLAND INSURANCE COMPANY.

Be it remembered that heretofore, to wit, on the 7th day of April, in the year of our Lord one thousand eight hundred and thirty-four, the said Isaac Bradlie and John Gibbons, by John Glenn their attorney, prosecuted and sued forth, out of the circuit court here, the writ of the United States of America, of Capias ad Respondendum, directed to the marshal of Maryland district, in the words and of the tenor following, to wit:

Writ.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Marshal for Maryland district, greeting:

[SEAL.] We command you, that you summon the Maryland Insurance Company, a body corporate, whose stockholders are citizens of Maryland, if they shall be found in your district, and that them so summoned, you safe keep, so that you have their bodies before the Judges of the circuit court of the United States, for the fourth circuit in and for the Maryland district, at the United States Court room, in the city of Baltimore, on the eighth day of April, inst., to answer unto Isaac Bradlie and John Gibbons, citizens of the State of Delaware, of a plea of trespass on the case, and so forth. Hereof fail not at your peril; and have you then and there this writ. Witness the honorable John Marshall, Chief Justice of our Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-four.

J. G. Issued 7th day of April, 1834.

PHILIP MOORE, Clerk.

And the aforesaid Isaac Bradlie and John Gibbons, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said Maryland Insurance Company in the plea aforesaid, in form following, to wit:

Declaration.

THE UNITED STATES OF AMERICA,
Maryland District, sc.

The Maryland Insurance Company, a body corporate whose Stockholders are citizens of Maryland, was summoned to answer unto Isaac Bradlie and John Gibbons, citizens of the State of Delaware, of a plea of trespass on the case, and so forth; and thereupon the said plaintiffs, by John Glenn their attorney complain, for that whereas the said plaintiffs, heretofore, to wit, on the second day of November, eighteen hundred and thirty-two, at the district aforesaid, by William Howell and Son, the agent of said plaintiffs, according to the usage and custom of merchants, caused to be made a certain policy of insurance, purporting thereby and containing therein, that the said William Howell and Son, on account of the owners of the brig Gracchus, did make insurance and cause themselves to be insured, lost or not lost, at and from Baltimore, for six callendar months, commencing this day, said second of November at noon, if the said brig should be on a passage at the expiration of said term the risk to continue at the same rate of premium until her arrival at her port of destination, upon the body, tackle or apparel and other furniture of the good brig called the Gracchus, whereof was master on that voyage Snow, or whoever should go master in said vessel, beginning said adventure, upon the said vessel, her tackle, apparel and appertenances, at and from Baltimore, aforesaid, and so to continue and endure until the twenty-second day of May, eighteen hundred and thirty-three, or as aforesaid, and it should and might be lawful for the said vessel in her voyage, to proceed and sail to, touch and stay at any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to the said insurance. The said vessel, tackle and appurtenances for so much as concerns the assured and assurrers in the said policy, should be valued at the sum insured. Touching the adventures and perils insured against, which the assurers were contented to bear, and take upon themselves upon the said voyage, they were of the seas, fire, enemies, pirates, thieves, jettisons, restraints and detainments of all kings, princes, or people of what nation, condition or quality whatever, barratry of the master and mariners, and all other perils, losses or misfortunes that have, or shall come to the detriment or damage of the said vessel, or any part thereof, for which assurers are legally accountable; and in case of any loss or misfortune by any of the perils insured against, it should be lawful to, and necessary for the assured, their factors, servants and assigns, and the assured on their part agreed and engaged by themselves, their factors, servants and assigns, to sue, labor, and travail for, in, and about the defence, safeguard and recovery of the said vessel, or any part thereof, without prejudice to the said insurance, to the charges whereof, they, the assurers, would contribute in proportion, as the sum thereby insured is to the whole amount at risk; and so the assurers were contented, and did thereby bind the Maryland Insurance Company to the assured, their executors, administrators and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for the assurance by the said assured, after the rate of four per cent. to return five-eighths per cent. for each whole month not used, and one-half per cent. additional if the ports in Mexico be not used; if no loss happens, and in case of loss by any of the perils insured against, such loss to

be paid in ninety days after proof and adjustment thereof, the amount of the note given for the premium if unpaid and due to the company from the assured, when such loss becomes due being first deducted. And by certain memoranda thereunder written, it was agreed that no loss should be paid on any average under five per cent. exclusive of all charges and expenses incured for ascertaining and proving the loss, unless the said average be general; and it was further agreed, that if any dispute should arise relating to a loss on the policy it should be referred to disinterested persons mutually chosed, who should have power to adjust the same, and their award in writing should be binding on all parties; it was also agreed that, if the above vessel after a regular survey should be condemned for being unsound or rotten, the company should not be bound to pay their subscriptions on said policy. It was also agreed between the assurers and assured, that in all cases of return premium one quarter of a per cent. upon the sum thereby insured should be retained by the assurers, and that no part of the premium should be returned or abated on account of any deviation which should be made by the owners or their factors from that present voyage, and that the policy should be void in case of its being assigned or transfered without the consent in writing of the assurers previously obtained; and the said property was warranted by the assured, free from any charge, damage or loss which might arise, in consequence of seizure or detention of the property, for or on account of any illicit or prohibited trade; and that the assured should not abandon in consequence of the port of destination being blockaded or occluded, but the vessel in such case should have liberty to proceed to another neighboring port not blockaded or occluded, and there end the voyage. And it was also agreed that in case of capture or detention, the assured should not abandon in less than ninety days after advice thereof, unless previously condemned; and in case of capture or detention from any cause, the assured renounced all claim against the company for demurrage, and masters, officers, and seamen's wages and provisions, and should said brig not be heard of in twelve months from the time she should leave her last port, then she should be deemed a loss which the company engaged to pay without further delay, as by this said policy and memoranda will more fully appear. And the said plaintiffs, in fact say, that the said policy of insurance and memoranda were so made by the said William Howell and Son, as aforesaid as agent of said plaintiffs, they being then and there, and at the time of the loss hereinafter mentioned owners of the said brig of all which premises the said defendants afterwards, to wit, at the district aforesaid, had notice. And the said plaintiffs aver, that the said defendants then and there became insurers to the said plaintiffs, and then and there subscribed said policy as such insurers to the amount of ten thousand dollars on the said vessel in the said voyage and time, to and at the district aforesaid. And the said plaintiffs further say, that heretofore, to wit, on the day and year aforesaid, at the district aforesaid, the said vessel departed and set sail from Baltimore aforesaid, and that afterwards and before the expiration of the said six months, to wit, on the twenty-third day of March, eighteen hundred and thirty-three, the said brig, by tempest and gales, &c., was forced and cast ashore in the river Mississippi, and was then and there broke, shattered and bilged, and the said ship within the six months, as aforesaid, by force of the winds and tempests was wholly lost, to wit, at the district aforesaid.

And whereas also the said plaintiffs heretofore, to wit, on the day and year first aforesaid, at the district aforesaid, according to the said usage and

custom of merchants, caused to be made a certain other policy of insurance upon a certain brig or vessel called the Gracchus, for the same time and voyage, and upon the same subject matter of insurance, and upon the same terms and stipulations, and containing therein to the same effect as in the said policy of insurance, in the said first count of this declaration is abovementioned, as by the said policy will more fully appear; of all which the said defendants then and there had notice. And the said plaintiffs aver, that the said defendants then and there became insurers to said plaintiffs, and then and there subscribed said policy to the amount of ten thousand dollars on the said vessel, on the said voyage, and for said term of six months, to wit, at the district aforesaid. And the said plaintiffs further say, that at the time of making of the said policy of insurance, and from thenceforth until and at the time of the loss hereinafter mentioned, they, the said plaintiffs were owners of said vessel, and the said insurance was made by said William Howell and Son, in trust for the said plaintiffs, to wit, at the district aforesaid. And the said plaintiffs further in fact say, that whilst said vessel was proceeding on her voyage as aforesaid, and within the said period of six months as aforesaid, for which time said vessel was insured, to wit, at the district aforesaid, the ship or vessel by and through the perils and dangers of the sea, and by the force and violence of the winds and waves, was stranded, bulged, and wholly lost to said plaintiffs. Of all which said premises the said defendant afterwards, to wit, at the district aforesaid had notice, and were then and there requested by the said plaintiffs to pay them the said sum of ten thousand dollars so by them insured as aforesaid, and which the said defendants ought then and there to have paid according to the form and effect of the said policy of insurance, and their said promise and undertaking so by them made as aforesaid. Nevertheless the said defendants, although often thereto requested, have not yet paid the said sum of money, or any part thereof to the said plaintiffs; but to pay the same have hitherto wholly refused and still refuse, to the damage of the said plaintiffs twenty thousand dollars; and therefore they bring suit, &c.

J. GLENN, for plaintiffs.

A copy of which said declaration was made and sent with the said writ to the Marshal of the Maryland District aforesaid, thereon endorsed "to be served on the defendants with the writ." At which mentioned eighth day of April, in the year of our Lord one thousand eight hundred and thirty-four, being the day of the return of the aforesaid writ, comes into the circuit court here the said Isaac Bradlie and John Gibbons by their attorney aforesaid, and the Marshal of the Maryland district aforesaid, to wit, Thomas Finley, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

Return.

"Mr. David Stewart will appear for the company." And the said Maryland Insurance Company being called, appears in court here by David Stewart their attorney; and thereupon on motion of the said Isaac Bradlie and John Gibbons, by their attorney aforesaid,

Rule Plea.

It is ruled by the court here, that the said Maryland Insurance Company

answer to the declaration of the said Isaac Bradlie and John Gibbons in the plea aforesaid, or judgment by the court here will be entered against them in default thereof. And the said Maryland Insurance Company by their attorney aforesaid, defend the force and injury, when, and so forth; and pray leave of the court here, to imparle until the first day of November next, and then to answer to the declaration aforesaid of the said Isaac Bradlie and John Gibbons, in the plea aforesaid; and to them it is granted: the same day is given to the aforesaid Isaac Bradlie and John Gibbons also. At which said first day of November, in the year of our Lord one thousand eight hundred and thirty-four, to which said day the said Maryland Insurance Company had leave to imparle, and then to answer to the declaration aforesaid of the said Isaac Bradlie and John Gibbons, comes again into the circuit court here, as well the said Isaac Bradlie and John Gibbons by their attorney aforesaid, as the said Maryland Insurance Company by their attorney aforesaid. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the eighth day of April next; at which said eighth day of April, in the year of our Lord one thousand eight hundred and thirty-five, comes again into the circuit court here, as well the said Isaac Bradlie and John Gibbons, by their attorney aforesaid, as the said Maryland Insurance Company by their attorney aforesaid. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first day of November next. At which said first day of November, in the year of our Lord one thousand eight hundred and thirty-five, comes again into the circuit court here, as well the said Isaac Bradlie and John Gibbons by their attorney aforesaid, as the said Maryland Insurance Company by their attorney aforesaid. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the eighth day of April next, at which said eighth day of April, in the year of our Lord one thousand eight hundred and thirty-six, comes again into the circuit court here, as well the said Isaac Bradlie and John Gibbons by their attorney aforesaid, as the said Maryland Insurance Company by their attorney aforesaid. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first day of November next.

At which said first day of November, in the year of our Lord one thousand eight hundred and thirty-six, comes again into the circuit court here, as well the said Isaac Bradlie and John Gibbons, by John Glenn and Reverdy Johnson, their attorneys, as the said Maryland Insurance Company, by David Stewart and Jonathan Meredith, their attorneys.

Plea, Non assumpsit, and Issue.

And the said Maryland Insurance Company by their attorneys aforesaid, as before, defend the force and injury, when, and so forth, and say, that they did not assume upon themselves in manner and form, as the aforesaid Isaac Bradlie and John Gibbons, above, against them have complained; and of this they put themselves upon the country; and the said Isaac Bradlie and

John Gibbons in like manner, and so forth. Therefore let a jury thereon appear before the court here, immediately, by whom and so forth, and who neither, and so forth, to recognize, and so forth, because as well, and so forth, whereupon for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the panuel of petit jurors returned to the court here, by the Marshal of the Maryland District aforesaid, be drawn by ballot; and thereupon, the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties; and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury.

David Brierly, Nicholas D. Worthington, David J. Ruddach, Isaac Hoshal, William Houck, Jonathan Warner, Thomas G. Howard, Robert Garrett, Walter Perdue, John P. Hooper, John Anderson, Lewis Kemp, who being empannelled and sworn to say the truth in the premises, upon their oath do say,

Verdict.

That the said Maryland Insurance Company did assume upon themselves in manner and form, as the aforesaid Isaac Bradlie and John Gibbons within against them have complained; that they assess the damage of the said Isaac Bradlie and John Gibbons, sustained by occasion of the non-performance of the promises and assumptions aforesaid, to the sum of $3489 22, three thousand four hundred and eighty-nine dollars and twenty-two cents, current money.

Judgment.

Therefore it is considered by the court here, that the aforesaid Isaac Bradlie and John Gibbons, recover against the said Maryland Insurance Company as well the sum of (3489 22) three thousand four hundred and eighty-nine dollars and twenty-two cents, current money, their damages aforesaid, by the jurors afosesaid, in form aforesaid, assessed; to be sustained by occasion of the non-performance of the promises and assumptions aforesaid, as the sum of by the court here, unto the said Isaac Bradlie and John Gibbons on their assent adjudged, for their costs and charges, by them about their suit in this behalf laid out and expended. And the said Maryland Insurance Company, in mercy &c.

Memorandum.—Judgment rendered in this cause, on this sixteenth day of November, in the year of our Lord one thousand eight hundred and thirty-six, for the damages laid in the declaration, and costs of suit, the said damages to be released on payment of the sum of three thousand four hundred and eighty-nine dollars and twenty-two cents, ($3489 22), with interest from the day of until paid, and costs of suit.

BRADLIE & GIBBONS
vs.
THE MARYLAND INSURANCE COMPANY. } In the circuit court, November term 1836.

Credit the judgment in this case with four hundred and eighty-five dollars and twenty-two cents, being the amount of premium, note and interest.

J. GLENN, for plaintiff.

21 November, 1836.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said parties, by their attorneys aforesaid, tendered to the court here the following bills of exception, which were by the court here signed and sealed, and which are in form following, to wit:

Defendants' Exception.

BRADLIE & GIBBONS
vs.
THE MARYLAND INSURANCE COMPANY. } Defendants' Exception.

At the trial of this cause the plaintiffs to support the issue on their part, read in evidence to the jury the following order for insurance and policy effected with the defendants on the 22d November, 1832.

Order for Insurance, Nov. 22d, 1832.

Wm. Howell and Son want insurance for account of the owners on the new copper fastened brig Gracchus, Freeman Snow, master, valued at $10,000, for six calendar months, commencing this day, the 22d Nov., 1832, at noon. If she be on a passage at the expiration of the term, the risk to continue at same rate of premium, until her arrival at her port of destination. The Gracchus was built near Seaford; is about 183 tons burthen, and intended to be coppered in the Spring, or perhaps sooner if it should be necessary. What premium? 4 per cent.

What return for each whole month not used? 5-8 per cent.

And what additional return of the ports of Mexico be not used? 1-2 per cent.

The returns only to be made in case no loss happens. She is now about sailing for New York, and has some gas pipes on deck. She will proceed on a foreign voyage as soon as a suitable charter can be got.

Agreed WM. HOWELL & SON.

Baltimore, Nov. 22d, 1832.

Policy of Insurance.

By the Maryland Insurance Company:
Vessel
No. 13703.

Whereas Wm. Howell & Son, agreeably to order do make insurance, and cause themselves to be insured, lost or not lost, at and from Baltimore, for six calendar months, commencing this day, at noon; if she be on a passage at the expiration of the time, the risk to continue at the same rate of premium, until her arrival at her port of destination, upon the body, tackle, or apparel and other furniture of the good brig called the Gracchus, whereof is master under God for this present voyage Snow, or whoever else shall go for master in the said vessel, beginning the adventure upon the said vessel, tackle, apparel and appurtenances, at and from Baltimore aforesaid, and so shall continue and endure until the 22d May, 1833, or as aforesaid. And it shall and may be lawful for the said vessel in her voyage, to proceed and sail to, touch and stay at any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this Insurance. The said vessel, tackle and appurtenances, for so much as concerns the assured and assurers in this policy, are and shall be valued at sum

insured. Touching the adventures and perils, which are the assurers, are contented to bear and take upon us in this voyage, they are, of the seas, fires, enemies, pirates, thieves, jettisons, restraints and detainments of all kings, princes, or people, of what nation, condition, or quality soever; barratry of the master and mariners, and all other perils, losses and misfortunes, that have or shall come to the detriment or damage of the said vessel, or any part thereof, for which assurers are legally accountable. And in case of any loss or misfortunes by any of the perils insured against, it shall be lawful to, and necessary for the assured, their factors, servants and assigns (and the assured on their part, agree and engage by themselves, their factors, servants or assigns) to sue, labor and travail for, in and about the defence, safeguard and recovery of the said vessel or any part thereof, without prejudice to this Insurance, to the charges whereof, we the assurers will contribute in proportion as the sum hereby insured is to the whole amount at risk. And, so we the assurers are contented, and do hereby bind the Maryland Insurance Company to the assured, their executors, administrators and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for the assurance by the assured at and after the rate of four per cent., to return five-eighths per cent. for each whole month not used, and one-half per cent. additional if the ports in Mexico be not used if no loss happen. And in case of loss by any of the perils insured against, such loss to be paid in ninety days after proof and adjustment thereof; the amount of the note given for the premium, if unpaid, and all sums remaining unpaid and due to the company from the assured, when such loss becomes due, being first deducted.

In witness whereof, the Maryland Insurance Company have, by their President, subscribed the sum insured, in Baltimore, the twenty-second day of November, one thousand eight hundred and thirty-two.

Memoranda.—1st. It is agreed by and between the assured and assurers, that no loss shall be paid on any average under five per cent. exclusive of all charges and expenses incurred for ascertaining and proving the loss, unless the said average be general.

2d. It is further agreed, that if any dispute shall arise relating to a loss on this policy, it shall be referred to disinterested persons mutually chosen, who shall have power to adjust the same, and their award in writing shall be binding on both parties.

3d. If the above vessel, after a regular survey, shall be condemned for being unsound or rotten, the company shall not be bound to pay their subscriptions on this policy.

4th. It is also agreed between the assured and assurers, that in all cases of return premium, one quarter of a per cent. upon the sum hereby insured, shall be retained by the assurers, and that no part of the premium shall be returned, or abated, on account of any deviation which shall be made by the owners or their factors, from the present voyage; and that the policy shall be void in case of its being assigned or transferred, without the consent in writing of the assurers previously obtained.

5th. Warranted by the assured free from any charge, damage or loss, which may arise in consequence of seizure or detention of the property, for or on account of any illicit or prohibited trade, or trade in articles contraband of war; and that the assured shall not abandon in consequence of the port of destination being blockaded or occluded, but the vessel in such case

shall have liberty to proceed to another neighboring port not blockaded or occluded, and there end the voyage. And it is also agreed, that in case of capture or detention, the assured shall not abandon in less than ninety days after advice thereof, unless previously condemned; and in case of capture or detention from any cause, the assured renounces all claims against the company for demurrage, and master's, officers' and seamen's wages and provisions; and should the said brig not be heard of within twelve months from the time she leaves her last port, then she shall be deemed a loss, which the company engages to pay, without further delay.

JOSEPH A. WALLACE, President.

$10,000 dollars. Ten thousand dollars.

W. Howell & Son

$10,000 at 4 per cent.	$400
Policy	1
	$401

Baltimore, 22d Nov., 1832.

Having first offered in evidence that the plaintiffs were the owners of the brig Gracchus at the time of said insurance, and that said insurance was effected for them by William Howell & Son, as their agents for that purpose, and that said plaintiffs continued to be the sole owners of the brig to the date of the abandonment hereafter mentioned.

And also read in evidence to the jury the following notice of abandonment and the answer of the defendants thereto, both dated the 22d of April, 1833, together with a letter from Freeman Snow, the captain of said brig, to the plaintiffs, dated at New Orleans the 25th March, 1833, and referred to in said notice of abandonment.

Notice of Abandonment.

Gentlemen:

We herewith submit a letter from Captain F. Snow, of the brig Gracchus, dated 25th March, 1833, at New Orleans, which states the unfortunate situation of the brig. In consequence of the *damage* together with the *detention* that must grow out of a lawsuit (in which it appears the vessel is involved) *the voyage being broken up*—We do hereby abandon to you the said brig Gracchus, as insured in your office per policy No. 13703, and claim for total loss.

Very respectfully, your ob't. serv'ts.
WM. HOWELL & SON.
Baltimore, April 22d, 1833.

To the Maryland Insurance Co., of Baltimore.

Letter from Capt. Snow to Isaac Bradlie, dated N. Orleans, 25 March, 1833.

NEW ORLEANS, 25th March, 1833.

ISAAC BRADLEY, Esq., *Seaford, Delaware.*

Dear Sir:—I left here on the 23d inst., to go 36 miles below, to complete loading the brig with sugars, for Baltimore; on the evening of the same day

in coming to in the English Turn in a heavy blow from the S. E., parted the small bower cable and lost the anchor. I then let go the best bower which brought her up, where we lay during the night; in the morning of the 24th, got under way and proceeded down the river; at 7 A. M. struck on a log, broke the rudder pintles, the brig fell off and went on shore. I then made a signal for a steam-boat which was in sight, she came to our assistance and attempted to pull us off, but the hauser parted; we then found that the brig was making water very fast, and that she would soon fill; got thirty odd negroes from a plantation and commenced pumping and discharging the cargo on board of the steam-boat; after discharging all of the pork and the greater part of the sugar, we succeeded in freeing of her at 5 P. M.; we then got her off and proceeded up to town where we arrived at 11 P. M. The owners of the steam-boat claim a salvage of 50 per cent. on vessel and cargo, which the underwriters of the cargo, with myself, have objected to; we have not been able to discharge the balance of the cargo to-day; what the consequence will be I cannot say. We hold the owners of the steam-boat liable for any damage that may incur on account of the detention; the brig continues to leak so as to keep both pumps going almost constantly. About one half of the sugar is damaged. I have noted a protest and had a survey, and shall proceed to have every thing done in the most careful manner, as the survey may direct for the interest of all concerned; as soon as I am able to inform you of what will be done, I will do so by the first opportunity.

Your obd't. serv't.
F. SNOW.

Reply of the Insurance Company to the notice of Abandonment.

OFFICE MARYLAND INSURANCE COMPANY,
22d April, 1833.

Messrs. WM. HOWELL & SON,

Gentlemen:—We cannot accept the abandonment tendered in your letter of this date, on the brig Gracchus, but expect you to do what is necessary in the case for the safety and relief of the vessel; we will thank you for any information which you may receive from Captain Snow.

Very respectfully, your most ob't.
J. A. WALLACE, President.

And the plaintiffs further read in evidence to the jury, the libel, process, answer and claim, and decree of the district court of the United States for the eastern district of Louisiana, on a libel filed in that court by Laurent Millaudon and others against said brig and her cargo, for salvage.

Libel in the District Court of Louisiana.

To the Honorable Samuel H. Harper, Judge of the District Court of the United States for the Eastern District of Louisiana.

The libel of Laurent Millaudon, ——— Morrison and Thomas H. Saul, all citizens of the State of Louisiana, respectfully alleges and propounds, that on the 24th day of March, 1833, the brig or vessel called the Gracchus, commanded by one Freeman Snow, being on her way from the port of

New Orleans to Baltimore, having on board a valuable cargo, consisting of ninety-five hogsheads of sugar, two hundred barrels of pork, and other articles of merchandise; and while engaged in descending the river Mississippi struck upon a snag or other impediment in said river, near the plantation of your libellant Thomas H. Saul, about twenty miles below the city of New Orleans, by which she sustained so much injury that she began to leak, and was rapidly filling. That the captain of said brig discovering the critical situation of the vessel, made a signal of distress, whereupon your libellant S. Morrison, who was then near said vessel on board of the steamboat Natchez, by him commanded, which steam-boat was then engaged in the endeavour to get off certain vessels grounded at or near the English Turn, immediately proceeded with the said steam-boat for the purpose of rendering such assistance as might be in his power; that he found said brig Gracchus in a most perilous situation, rapidly filling with water, and about to be abandoned by her officers and crew; that by lashing said brig to the said steam-boat Natchez, and by great exertions of himself, officers and crew, in which he was aided by your libellant Thomas H. Saul, who promptly came to his assistance with thirty-three strong and able bodied negroes, his slaves, they were enabled, by constant pumping, to keep said vessel afloat and transfer her cargo as aforesaid to the steam boat Natchez; and that without their prompt and efficient aid and assistance, the said brig Gracchus and her cargo aforesaid must have inevitably been lost and totally perished; that having secured the cargo by constant and unremitted pumping on the part of the crew of the Natchez and the slaves aforesaid of the said Saul, and by the lashing as aforesaid of the said vessel to the steamboat, they were enabled to keep said brig afloat and tow her to the levee of New Orleans, where she now is, within the jurisdiction of this court, as well as her said cargo on board of said steam-boat; that all the aforesaid services have been performed to said brig and her cargo in waters where the tide ebbs and flows and within the admiralty and maritime jurisdiction of this court; that the said steam-boat Natchez is the sole property of your libellant Laurent Millaudon, and was at the time of said accident manned and equipped and navigated at his expense; that your libellants having, by their prompt and efficient aid, rendered to the said vessel and cargo at great personal inconvenience and hazard, and with great exposure of their own property, saved the said vessel and cargo from inevitable total loss, are entitled to claim and receive a portion of said vessel and cargo, or the value thereof, as salvage and compensation for their services and the risk by them incurred. They pray that the proper admiralty process may issue against the said brig Gracchus, her tackle, apparel and furniture, the said ninety-five hogsheads of sugar and two hundred barrels of pork, and generally the cargo of said vessel. That all persons having or pretending to have an interest in the same be cited and admonished to shew cause why the said brig, together with the cargo, should not be sold, and the proceeds thereof brought into the registry of this court, and such proportion thereof allotted to your libellants for salvage and compensation for the extraordinary services by them rendered in the premises as to your honor may seem just, and that all other and further relief may be granted to them which the circumstances of their case may require.

Signed J. SLIDELL, Proctor for Libellants.

S. Morrison, one of the libellants, being duly sworn, says that the facts stated in the foregoing libel are true.

Signed S. MORRISON.

Sworn to before me this 27th March, 1833.

Signed B. B. WALLER, Deputy Clerk.

Order to issue Admiralty Process.

Judge's Order.

Let admiralty process issue as prayed for.

Signed SAMUEL H. HARPER, Judge U. S.

Process.

Whereupon the following warrant issued from the clerk's office, to wit:

The President of the United States of America, to the Marshal of the Eastern District of Louisiana, or to his lawful Deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the brig Gracchus and her cargo, now libelled by Laurent Millaudon and others in the district court of the United States for the eastern district of Louisiana; and that you do cite and admonish the owner or owners and all or every other person or persons having or pretending to have any right, title or interest in or to the same, to be and appear before a district court to be holden at the city of New Orleans on or before the 10th day of April, 1833, to shew cause, if any they have or can, why the said brig Gracchus and cargo should not be condemned and sold agreeably to the prayer of the libellants, and how you shall have executed this warrant that you make return according to law. Witness the honorable Samuel H. Harper, judge of the said court, this 27th day of March, A. D. 1833, and 57th year of the Independence of the United States.

Signed F. W. LEA, Clerk.

Upon which was the following endorsement: Received 27th March, 1833; served same day and took possession of the brig Gracchus and her cargo, took inventory same day, published monition and made this return this 28th of March, 1833.

Signed L. C. BACON, U. S. Dep. Marshal.

And afterwards, to wit, on the 2d day of April, 1833, the following order of court was entered of record, to wit:

Special Court, Thursday, April 2d, 1833.

Present, the hon. SAMUEL H. HARPER.

L. MILLAUDON and others
vs.
Brig GRACCHUS and Cargo. } No. 3281.

On motion of J. Slidell, Esq., on filing the affidavit of the marshal that the brig Gracchus is in a perishable condition, it is ordered that the parties interested in this case shew cause on Friday next, at 10 o'clock, why the said brig should not be sold, and the proceeds thereof brought into court subject to its further order.

Affidavit of the Marshal, filed 5th April, 1833.

L. MILLAUDON and others,
vs.
Brig GRACCHUS and Cargo.

John Nicholson, U. S. marshal, being duly sworn, deposeth that according to the best information received by him, the brig Gracchus now under his custody in the above libel is in a perishing situation, she requiring, as he is informed thorough repair of her keel before that the leak which now admits much water, so as to make it requisite that pumping should be almost continually performed, can be stopped.

New-Orleans, 3d April, 1833.

Signed JOHN NICHOLSON, U. S. Marshal.

Sworn to 3d April, 1833.

Signed F. W. LEA, Clerk.

And afterwards, to wit, on the 5th day of April, 1833, into the same court came Isaac Bradley, John Gibbons and G. R. Smith, and by their proctor filed the following claim of ownership, to wit:

Claim.

L. MILLAUDON and others,
vs.
Brig GRACCHUS and Cargo. } District Court U. S. Eastern District of Louisiana.

The claim and answer of Isaac Bradley and John Gibbons of Seaford, State of Delaware, owners of the said brig Gracchus, and of G. R. Smith, now in Pensacola, owner of the two hundred barrels of pork, and of the New Orleans Insurance Company, owners of the ninety-five hogsheads of sugar, the cargo of said brig Gracchus, respectfully show, that the claimants are the owners of the said brig and her cargo as aforesaid; that they deny all and singular the allegations in the libel contained, and require strict, full and legal proof thereof from the libellants; and they deny that the libellants are entitled to any sum as salvage for any services rendered by them to the brig. That all the said libellants can claim is for work and labour, according to the usual and fair charges therefor, but nothing as salvage.

Therefore these respondents and claimants pray that the said brig Gracchus and the cargo aforesaid may be delivered up to them as owners aforesaid, and the libel may be dismissed with costs.

Signed HENNEN, Proctor for Claimants.

Freeman Snow, the captain and commander of the said brig Gracchus, and agent of the aforesaid claimants, maketh oath to the correctness of the claims aforesaid.

Signed FREEMAN SNOW.

Sworn to before me this 5th April, 1833.

Signed F. W. LEA, Clerk.

L. MILLAUDON and others
vs.
Brig GRACCHUS and Cargo. } Libel for Salvage.

Salvage Decreed.

The court having maturely considered the pleadings and evidence in this

case, it being assumed that the value of the property saved is seven thousand dollars, it is adjudged, ordered and decreed that the respondents pay into court, or to the libellants, one-fourth of that sum, to be apportioned between themselves as they may agree as by them requested by way of salvage; and if they fail to do so within three days, then the property libelled shall be sold by the marshal after the usual notice, and the proceeds brought into court.

Out of the gross amount the libellants shall receive one-fourth part in full for their services, and the remainder shall be paid to the respondents, who in either case are to pay the costs of this suit.

And the plaintiffs also read in evidence the ten following letters from said Snow to the plaintiffs, dated respectively on the 31st of March, 8th and 25th of April, 9th, 14th and 28th of May, and 3d, 12th, 21st and 29th of June, 1833.

Letter from Capt. Snow to Isaac Bradlie, dated N. O. March 31, 1833.

New Orleans, 31st March, 1833.

ISAAC BRADLEY, Esq.
Seaford, Delaware.

Dear Sir: I wrote to you on the 25 inst., informing you of my return to the city, &c. I now have to say that the owners of the steam-boat have libelled the brig and cargo for salvage. The examination of witnesses has commenced, but when it will be brought to a trial I cannot say. The 10th day of April is mentioned in the libel. What the result will be it is not in my power to say. The brig made from 800 to 1000 strokes per hour since the cargo was out. I got permission from the marshal to heave her out to try and stop the leak. We found the after part of her keel twisted off, and the garboard streak split about 8 feet from the stern-post. We have had both sides hove out, and done as much to prevent her from leaking as could be done without making a full repair, but could not stop the leak entirely. She now makes about 150 strokes per hour. I have reason to think that the owners of the steam-boat have made promises to at least one of my men to induce him to give evidence in his favor. As the case progresses I will inform you of all that transpires. If you have any thing to say on the subject I hope will immediately write to me. Mr. Dance is doing all in his power to assist me; and it is the opinion of every one that we shall be able to defeat the owners of the steam-boat, at least in the most part, as there was never a charge of the kind made before of more than $10 per hour by any steam-boat.

Your obedient serv't, FREEMAN SNOW.

P. S.—The Isabella is taking in a cargo of tobacco and flour for Gibraltar.

Letter from Capt. Snow to Isaac Bradlie, dated N. O. 8 April, 1833.

NEW ORLEANS, 8th April, 1833.

Isaac Bradley, Esq., Seaford, Delaware.

Dear Sir: Since writing to you on the 30th ultimo, nothing has been done in regard to the brig, except taking the deposition of the crew of the

brig. Saturday, the 13th inst. is now appointed for the trial of the case. I have thought it most advisable to discharge all of the crew, that is, my mate and stewart, as it is altogether uncertain when or how the case may be decided; if the court should give to the steam-boat owners 50 per cent. I shall be at a loss how to act without some advice from you on your receipt of mine to you of the 25th ultimo.

Your obedient servant,

FREEMAN SNOW.

Letter from Capt. Snow to I. Bradlie, dated N. O. 25th April, 1833.

NEW ORLEANS, 25th April, 1833.

ISAAC BRADLEY, Esq., Seaford, Delaware.

Dear Sir: I have omitted writing to you for one week, in hopes to be able to inform you of the final result of the court in regard to the steam-boat against the brig; but such is not the case as yet; it is put off from day to day, and it is uncertain when it will be decided; but as soon as it is, I will inform you of the result. Freights are higher than when I obtained the one I had on board; six dollars has been given for sugars to Baltimore.

Your obedient and humble servant,

FREEMAN SNOW.

Letter from Capt. Snow to I. Bradlie, dated N. O. 9th May, 1833.

NEW ORLEANS, 9th May, 1833.

ISAAC BRADLEY, Seaford, Delaware.

Dear Sir: The case of the Gracchus was argued before the court on the first inst., but the decision of the court was not delivered until this morning; it is, that the vessel and cargo pay to the libellants one quarter of seven thousand dollars as a salvage, valuing the vessel and cargo at this amount, $7000. How it will be settled with the underwriters here I cannot say; the amount of the cargo I had on board was insured here for about eight thousand dollars; as soon as the thing is settled I will let you know; the order of the court is that it be paid in three days, or the property sold to pay the amount. I shall be guided by Mr. Dance in all that I do, and act to the best of my own judgment for the benefit of all concerned.

And remain your obed't servant,

FREEMAN SNOW.

P. S.—Freights are very scarce, and lower than any time since I have been here.

F. SNOW.

Letter from Capt. Snow to I. Bradlie, N. O. 14th May, 1833.

NEW ORLEANS, 14th May, 1833.

ISAAC BRADLEY, Esq., Seaford, Delaware.

Dear Sir: I have this morning got possession of the brig again, the de-

cree of the court having been complied with, the port-wardens valued the brig at two thousand five hundred dollars, (2,500), she therefore pays her proportion of the general average at that valuation. I shall now go on to fitting her out under the directions of the port-wardens; the cost to put her in the situation she was in when I left here is estimated at 1,471 dollars, exclusive of what falls on the general average; it now remains with you or the underwriters to abide by the decision of the court, or to appeal to the Supreme Court at Washington. Mr. Dance thinks it strange that you have never written; it will be very uncertain whether there will be any thing to do for the brig when I get her ready for sea; there is more vessels here at present than there has been at any one time since I arrived here ; freights are getting very scarce, vessels are taking cotton coastwise at $150 per bale, and sugars at $4 per hhds., and one-half of what there is here will not get freight at that ; the river is falling fast, and the cholera increasing daily; thank God I enjoy good health as yet; I shall continue to write you every week, and let you know how I progress with the work.

Your obedient servant,

FREEMAN SNOW.

Letter from Capt. Snow to I. Bradlie, dated N. O. 26th May, 1833.

NEW ORLEANS, 26th May, 1833.

ISAAC BRADLEY, Esq., Seaford, Delaware.

Dear Sir : I am still without any advice from you; I have hove out the brig and repaired one side, the one that was the worst, the keel was put into its place again with much less trouble than any one thought for; I am in hopes to get her ready for a cargo if there is any offer in the course of 10 or 12 days; as soon as the work is done and the business settled, I shall remit all the bills on to you.

If I understand you right, your insurance expires this month ; every thing is uncommonly dull here, there is nothing coming down the river in comparison to former years at this season, as I am told; whether it is owing to the cholera or the low stage of the water in the river above, I cannot say; the river here is much lower than generally at this season.

Your obedient servant,

F. SNOW.

Letter from Capt. Snow to I. Bradlie, dated N. O. June 3d, 1833.

NEW ORLEANS, 3d June, 1833.

ISAAC BRADLEY, Esq., Seaford, Delaware.

Dear Sir : I have now got the brig ready for a freight, except painting and getting up the yards and mast, which I am in hopes to have done if the weather continues good in 3 or 4 days; the prospect of a freight to any part of the world is very bad; as soon as I have all done, and can get in the bills, I will forward you the amount. I am yet without any advice from you, for which I cannot account for; Messrs. William Howell and Son, have complained, I have been told, that Messrs. Harrison, Brown & Co. have not written to them; they know no one in the business except myself; and as I

have no concern with any one, nor orders from you to write to any one except yourself, I have not done it; to you, sir, I have wrote once every week, except one since I arrived here, presuming if there was any thing which you thought it necessary that Mr. Howell should be informed if you would communicate it to him; I shall, however, write to Mr. Howell to-day and give him the outlines of the whole of the business up to to-day.

Your obedient servant,

FREEMAN SNOW.

Letter from Capt. Snow to I. Bradlie, dated N. O. 12th June, 1833.

NEW ORLEANS, 12th June, 1833.

ISAAC BRADLEY, Esq., Seaford, Delaware.

Dear Sir: I have now to inform you that I have just got the Gracchus ready to receive cargo, and shall take in such freight as may offer for Baltimore, and leave as soon as much is obtained as will ballast her; as soon as all the bills are collected and the amount ascertained I will let you know; I am still without any advice from you, which I think very strange of, as does also Messrs. Harrison, Brown & Co. Whatever you may think of my conduct, I think you might write a few lines, it would have relieved my mind of a very heavy burden.

Your obedient servant,

F. SNOW.

Letter from Capt. Snow to I. Bradlie, dated N. O. 21st June, 1833.

NEW ORLEANS, 21st June, 1833.

ISAAC BRADLEY, Esq., Seaford, Delaware.

Dear Sir: I have had the brig at the levee for eight days, and have got but about thirty-five tons of lead for freight, as yet, and for that I cannot get but one dollar and fifty cents per ton, and the prospect of getting any more at present is very bad; as soon as I can get enough cargo to ballast her, and no more offers, I shall leave for Baltimore, which I am in hopes will be in the course of next week; the cholera has very much subsided, the papers did not report more than thirty cases per day for the last two days; thank God I have kept clear of it as yet.

Your obedient servant,

FREEMAN SNOW.

Letter from Capt. Snow to I. Bradlie, dated N. O. 29th June, 1833.

NEW ORLEANS, 29th June, 1833.

ISAAC BRADLEY, Esq., Seaford, Delaware.

Dear Sir: I now have to inform you that I have on board about eighty ton of lead, 49 ton at $2 00 per ton, the balance at $1 50, with 20 hhd. of tobacco at $4 per hogshead, some bail rope, with a few barrels. I shall fill up with cotton, and am in hopes to leave here in four days for Baltimore. Sir, your not writing to me has placed me in a very awkward situation; Mr. Dance thinks very strange of it; the amount of the brig's proportion of

the general average bill is $1,245 7 cents, and the amount of the partial average is $1,690 15, making together $2,935 22, two thousand nine hundred and thirty five dollars and twenty-two cents. I shall have to make the brig over to Messrs. Harrison, Brown & Co. for the amount that they have paid and advanced on account of the brig, which will not fall much short of $4000 dollars, four thousand dollars; the whole of the bills will be sent by mail as soon as I am ready for sea, so as I can have every thing settled and *no* the exact amount, which I do not at present.

Your obedient servant,

FREEMAN SNOW.

And also the following letter from Harrison, Brown & Co. to William Howell & Son, of the 29th May, 1833.

Letter from Harrison, Brown & Co., to W. Howell & Son, dated 29th May, 1833.

NEW ORLEANS, 29th May, 1833.

Mail.

Messrs WM. HOWELL & SON, Baltimore.

Gentlemen: From a paragraph in a letter received from our mutual friends, Messrs. Harrison & Sterett, we observe that you anticipated receiving advice from us respecting the brig Gracchus. Had we for a moment thought, or had we known that you were the agents for or interested in that vessel, we should have with pleasure kept you duly advised of every thing relative to her, but it was only from the above mentioned letter that we became aware of your having any thing to do with her, Captain Snow never having mentioned such to us, which now appears somewhat strange. A few days after the vessel arrived here, and after her inward cargo was discharged, Captain Snow called on us and stated that as Captain Bradley, one of the owners, was an old acquaintance of our Mr. Dance's, he wished us to take the consignment of the vessel, which we did, and as a West India freight did not then offer, we obtained him one for your port; she left this for Mr. Sheppard's plantation, about 33 miles below, to complete her lading, and on her passage down she missed stays and went on shore, by which she lost her rudder and sprung the keel from the dead wood. The steam-boat Natchez and 33 negroes from a plantation near to her having pumped her free and taken the cargo she had then in, say 90 hhds. sugar and 200 bbls. pork on board, brought her to town, when a claim of 50 per cent. salvage was set up, which not being paid to them, she was libelled. We employed a lawyer to defend the suit, and after having made the best possible defence, the court decreed $1,750 salvage and all costs. We had a general average stated, the contribution to which were, for the vessel $1,245 07, sugar $750 57, and pork $782 61; the two latter were immediately paid to us, the former we hold against the vessel; she is now in the carpenter's hands, and will, we presume, be finished in about 7 days; the cost of repairs will amount to about $1,750; we presume our claim on her will be for about $3,500. We are, gentlemen, respectfully,

Your obedient servants,

HARRISON, BROWN & Co.

And further read in evidence a record of the proceedings and decree of the district court of the United States for the district of Maryland, on a libel filed by Harrison, Brown & Co. against said brig upon a bottomry bond executed by Captain Snow, at New Orleans, on the 2d day of July, 1833.

Record in the District Court of the United States for Maryland District, on the Bottomry Bond.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in September, in the year of our Lord one thousand eight hundred and thirty-three:

Present, the honorable ELIAS GLENN, Judge of Maryland District.
NATHANIEL WILLIAMS, Esq. Attorney.
THOMAS FINLEY, Esq. Marshal.
PHILIP MOORE, Clerk.

Among other were the following proceedings, to wit:

WILLIAM G. HARRISON, ANTONIO BLANDIN, and WILLIAM DANCE vs. THE BRIG GRACCHUS, her tackle, apparel and furniture.	Libel filed 30th July, 1833.

Libel.

To the honorable Elias Glenn, Judge of the District Court of the United States for the District of Maryland.

The libel of William G. Harrison, of the city of Baltimore, State of Maryland, Antonio Blandin, of the city of Tampico, in the Republic of Mexico, and Thomas Dance, of the city of New Orleans and State of Louisiana, against the brig Gracchus, her tackle, apparel, sails, rigging, boats, anchors, and cables, and appurtenances, against Freeman Snow, now or late master of the said brig, and against Isaac Bradley, now or late owner of the said brig, respectfully showeth: That your libellants, merchants and copartners, trading in the city of New Orleans, under the name and firm of Harrison, Brown & Co. did on or about the 2d day of July 1833, lend on bottomry on the brig Gracchus, her tackle, apparel, sails, rigging, boats, anchors, cables, and appurtenances, to the said Freeman Snow the sum of three thousand seven hundred and fifteen dollars and forty-one cents, ($3,715 41,) current money of the United States; the said brig Gracchus, whereof the said Freeman Snow was then master, then lying and being at the port of New Orleans, in the State of Louisiana, being a foreign port, and none of the owners of the said brig being at or near the said port, the said captain being otherwise unable to procure the necessary moneys to defray the proportion of salvage of said brig, decreed by the district court of the United States in and for the district of Louisiana, in consequence of being stranded in the river Mississippi, to refit and victual the said brig, and complete his intended voyage, for which sum of three thousand seven hundred and fifteen dollars and forty-one cents, the said Freeman Snow did on the said

second day of July, in the year one thousand eight hundred and thirty-three, by a due and lawful instrument of bottomry and hypothecation, bearing date the same day and year, a copy whereof is hereto annexed, to which your libellants pray leave to refer as a part of this libel, hypothecate the said brig Gracchus, with her tackle, apparel, sails, rigging, boats, anchors, cables, and appurtenances, to your libellants for the payment of the sum of three thousand nine hundred and one dollars and eighteen cents, ($3,901 18,) being the same sum with marine interest of five dollars in every five hundred dollars, on the arrival of the said brig Gracchus at the port of Baltimore. And the libellants do aver that the said brig Gracchus did arrive at the port of Baltimore on the 29th day of July, 1833, where she still lies; and that the said sum of $3,901 18, was demanded of the said Freeman Snow, after the arrival of the said vessel at the port of Baltimore, but that the said Freeman Snow has refused to pay the same or any part thereof, and that the whole sum of 3,901 18 remains unpaid.

Wherefore your libellants pray that process of this honorable court may attach the said brig Gracchus, her tackle, apparel, sails, rigging, boats, anchors, cables, and appurtenances, and to cite and admonish the said Freeman Snow, and Isaac Bradley, and all others concerned, to show cause, if any they have, why the said vessel, her tackle, apparel, sails, rigging, boats, anchors, and cables, should not be sold and the proceeds paid to your libellants to satisfy their demand as aforesaid.

GEO. M. GILL,
Proctor for Libellants.

Bottomry Bond.

STATE OF LOUISIANA,
City of New Orleans:

Before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn, this day personally appeared Freeman Snow, master of the brig Gracchus, of Vienna, now lying in the port of New Orleans, who declared that being under the necessity of taking up upon the body of said brig Gracchus at this port the sum of three thousand seven hundred and fifteen dollars and forty one cents, lawful money of the United States, for defraying the costs of sundry indispensable repairs, and defraying her proportion of salvage decreed by the district court of the United States, in consequence of being stranded in the river Mississippi, and which said sum Harrison, Brown & Co. merchants, of this city, have at his request loaned to him for repairs and outfits aforesaid, at the rate of five dollars for every hundred dollars so advanced as aforesaid, and which makes the further sum of one hundred and eighty-five dollars and seventy-seven cents, the whole payable on the arrival of said vessel. Now be it known, that in consideration of the loan aforesaid, the said vessel being now ready for sea, and bound for the port of Baltimore, the said Freeman Snow, now in this city, and acting in good faith for all concerned, and to protect the said Harrison, Brown & Co. as far as in his power lies from all loss and damage that shall or may arise to them by reason of permitting said vessel to proceed upon her destined voyage, being indebted to the said firm in the sum of three thousand nine hundred and one dollars and eighteen cents, and which said amount is to be paid at the port of Baltimore, does by these presents mortgage and specially hypothecate unto Antonio Blandin, William

Gillpin Harrison, and Thomas Dance, all of this city, trading under the commercial firm of Harrison, Brown & Co., represented in the premises by Thomas Dance, one of said firm present and accepting the aforesaid brig Gracchus, of Vienna, with all her sails, rigging, boats, anchors, cables, and appurtenances, as she now lies in the port of New Orleans, which said vessel is enrolled in the port of Vienna, in the words and figures following, to wit:

Permanent, No. 98, ninety-eight—Enrolment in conformity to an act of Congress of the United States of America, entitled an act for enrolling and licensing ships and vessels to be employed in the coasting trade and fisheries, and for regulating the same, Isaac Bradley, of Sussex county, *State of Maryland*, part owner, having taken or subscribed the oath required by the said act, and having sworn that he, together with John Gibbons, of the county and State aforesaid, are citizens of the United States, sole owners of the ship or vessel called the Gracchus, of Vienna, whereof Isaac Bradley is at present master; and as he hath sworn is a citizen of the United States, and that the said ship or vessel was built in Sussex county, State of Delaware, during the present year, as appears by a certificate of admeasurement filed in this office of this date; and said certificate having certified that the said ship or vessel has one deck and two masts, and that her length is ninety-one feet, her breadth twenty-nine feet inches, her depth nine feet seven inches, and that she measures one hundred and eighty-three and 87-95th tons; that she is a square sterned brig, has no galleries and billet-head; and said Isaac Bradley having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said brig has been duly enrolled at the port of Vienna.

Given under my hand and seal, at the port of Vienna, this twenty-seventh day of September, in the year one thousand eight hundred and thirty-two.

Signed CHARLES LEARY, Coll'r.

And the said Freeman Snow further declares by these presents, that at the time of signing this act, as well as when the aforesaid loan was made to him, he is and was then the lawful master of said brig, and as such, has power and authority to charge and engage said vessel as aforesaid; and that said vessel, her tackle, apparel, and appurtenances shall at all times be liable for the payment of the aforesaid sum of three thousand nine hundred and one dollars and eighteen cents, hereby declaring that the advances herein made were solely and exclusively for the fitting out and getting said vessel ready for sea, and that without them she would have been libelled and sold to the great detriment of her owners.

Done and passed at New Orleans, this said second day of July, eighteen hundred and thirty-three, in presence of George D. Clement and Edwin L. Lewis, both of this city, witnesses, who have hereunto signed their names with said parties and he the said notary.

Signed FREEMAN SNOW.
HARRISON, BROWN & CO.
By Thomas Dance.

GEORGE D. CLEMENT,
EDWIN L. LEWIS.

WM. Y. LEWIS, Not. Pub.

I hereby certify that the foregoing is a true copy of the original extant upon the current record in my office.

[SEAL.] In witness whereof I grant these presents under my hand and seal, at New Orleans, this 3d day of July, 1833.

W. Y. LEWIS, Not. Pub.

The undersigned, recorder of mortgages for the parish and city of New Orleans, State of Louisiana, certifies that the foregoing deed of mortgage has been this day recorded in his office in B. 25, Fo. 423.

New Orleans, third July, eighteen hundred and thirty-three.

[SEAL.] P. LANDREAUX, Rec'r.

UNITED STATES OF AMERICA,
State of Louisiana:

By A. B. Roman, Governor of the State of Louisiana.

These are to certify that P. Landreaux, whose name is subscribed to the instrument of writing herein annexed, was, at the time of signing, and is now recorder of mortgages for the parish and city of New Orleans, and that full faith and credit is due thereto.

[SEAL.] Given at New Orleans, under my hand and seal of the State, the tenth day of July, one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-eighth.

A. B. ROMAN.

By the Governor.

GEO. EUSTIS, Secretary of State.

The Brig Gracchus and her Hull,

To Harrison, Brown & Co. *Dr.*

To amount of bottomry bond, filed in the district court of the United States for the district of Maryland, - - - - -	$3,901 18
To interest upon same from 29th day of July, 1833, the time when the brig Gracchus arrived at Baltimore, and when the demand of payment was made to 6th September, 1833; 40 days interest - - - - - - -	26 00
	$3,927 18

CITY OF BALTIMORE, *sct.*

Before me, the subscriber, one of the justices of the peace of the State of Maryland, in and for the city of Baltimore, personally appeared William G. Harrison, one of the firm of Harrison, Brown & Co., and made oath in due form of law, that to the best of his knowledge and belief, the above account is just and true, and that no part of the same has been paid or satisfied.

Sixth September, 1833.

HENRY BRICE, J. Peace.

Decree.

WILLIAM G. HARRISON, ANTONIO BLANDIN and THOMAS DANCE vs. THE BRIG GRACCHUS. } District Court of the United States.

And thereupon the libel and the proceedings therewith filed, being duly considered, and no claim being interposed for the said brig, nor the said libel in any manner denied, it is this fifth day of September, in the year 1833, ordered and decreed, that the said libel be in all things taken and stand as confessed; and this court proceeding to do justice in the premises, according to the allegations of the said libel confessed as aforesaid, further orders and decrees, that there is due to the libellants the sum of three thousand nine hundred and one dollars and eighteen cents, with interest from the twenty-ninth day of July, in the year aforesaid, together with the cost of this proceeding; and for the purpose of satisfying the said sum of money and costs aforesaid, it is hereby further ordered and decreed, that the marshal of the United States for this district, after giving fifteen days' public notice by advertisement of the time, and place, and terms of offering the said brig Gracchus for sale: sell the said brig Gracchus, her tackle, apparel and appurtenances, at public auction, in the city of Baltimore, for cash to the highest bidder therefor, and make return of such sale to this court; and that out of the proceeds thereof, the aforesaid claim of the said libellants and the costs shall be paid, and that the residue of such proceeds, if any, shall await the further orders of this court.

ELIAS GLENN, Dist. Judge.

Receipt for the amount of the Claim.

Baltimore, 24th Sept. 1833. Received of Thomas Finley, Esq. marshal of the district court of the United States for this District, in full satisfaction of the within decree, three thousand nine hundred and one dollars and eighteen cents principal, and thirty-three dollars and fifteen cents interest, and ten dollars attorney's fee in this case.

R. W. GILL, Attorney for Libellant.

$3,901	18	principal,
33	15	interest,
10	00	Attorney's fee.
$3,944	33	

In the matter of the libel of WM. G. HARRISON, ANTONIO BLANDIN, and THOMAS DANCE vs. The BRIG GRACCHUS. } In the District Court of the United States for the District of Maryland.

Petition of F. Snow vs. the proceeds of the Brig.

The petition of Freeman Snow respectfully sheweth, that he acted as master of the brig Gracchus on her late voyage from the tenth of January to the tenth August in the year eighteen hundred and thirty-three, at the monthly wages of fifty dollars, and that there is now due him by reason of his advances on account of the disbursements of the said vessel the sum of

two hundred and thirty-nine dollars seventy cents, as appears by his account and affidavit herewith filed. This petitioner further states, that the said brig has been sold to satisfy a bottomry claim due to the libellants above-mentioned, and after satisfying the same, that there is now a balance in this honorable court sufficient to pay the claim of this petitioner. He therefore prays, that by an order of this honorable court your honor will direct the payment of his wages out of said balance.

WM. H. GATCHELL, for petitioner.

Dr. Brig Gracchus and owners, in account with F. Snow, Master. Cr.

To amount of disbursements No. 1, - -	$598 96	1833. Feb. 13, By cash of T. Romain ft. of 1 trunk,	$1 00
do do No. 2, -	773 33	" " do Lenihan and G. ft. 7 boxes, -	1 85
½ 3 passengers money, -	30 00	" " do J. H. Field do 20 barrels, -	6 00
Services from 10 Jany, to 10 August, 7 months at $50,	350 00	" " do S. Thompson do 300 boxes,	15 00
Commission paid on $278,57,	13 90	" " do J. Minton 123 tons, 1422 lbs. stone, - - -	309 00
		" " do D. Lee passage,	40 00
		Mar. 20, do Harrison, Brown & Co., -	100 00
		" 21, do do -	175 00
		" " do sales 2 bbls. bread,	6 00
		April 5, do Harrison, B. & Co.	65 00
		June 1, do do	135 00
		" " do 6 passengers,	240 00
		" " do Harrison, B. & Co. - -	260 00
		" " do commissions charged on cargo shipped in Buck, ret'd, - - -	52 62
		" " do on insurance and policy, ret'd,	4 42
		" " do of J. Bradley N. York, -	13 60
		July 2, do ft. of 4 barrels,	2 00
		" " do Harrison & S.	100 00
		balance, -	239 70
	$1766 19		$1766 19
Aug. 10, to balance	$239 70	Aug. 20, By cash of Harrison & S. on account of freight from N. Orleans, -	164 69
		Balance, -	75 01
	$239 70		$239 70
Sept. 20, to balance	75 01	E. E., Balto., Sept. 20th, 1833	

STATE OF MARYLAND,
City of Baltimore, to wit:

On this 21st day of September, 1833, personally appears Freeman Snow before the subscriber, one of the State of Maryland justices of the peace, in and for the city aforesaid, and made oath on the Holy Evangely of Almighty God, that the within account as it stands stated, is just and true, and that he hath not directly or indirectly received any part, parcel, or satisfaction, or security of the same, except the credit therein given. Sworn before

SAML. PICKERING.

Decree.

In the matter of the libel of WILLIAM G. HARRISON, ANTONIO BLANDIN, and THOMAS DANCE *vs.* The BRIG GRACCHUS } In the District Court of the United States for the District of Maryland.

Upon tne petition of Freeman Snow in the above matter, it is by Elias Glenn, judge, and by the authority of this court ordered, that the marshal of the said district pay out of any moneys which may remain in his hands arising from the sale of said vessel, the sum of seventy-five dollars and one cent with interest from the 20th day of September, 1833, being the balance due the said Snow, master of the said vessel, for money paid, laid out and expended by him in necessary disbursements of said vessel during her last voyage, as appears by his account and affidavit of file in this court. Given under my hand, this 4th day of December, 1833.

ELIAS GLENN, D. J.

Receipt.

Received of the marshal (Thomas Finley, Esq.,) eighty-two dollars and one cent in full of the decree, and costs in the within case.

W. H. GATCHELL.

Debt,	$75 01
Int.	1 00
Atty. fee,	6 00
	$82 01

In the matter of the libel of WM. G. HARRISON, ANTONIO BLANDIN, and THOMAS DANCE *vs.* The BRIG GRACCHUS. } In the District Court of the United States for the District of Maryland.

Petition of J. Fearson and J. Hall, against the proceeds of the Brig.

The petition of Jesse Fearson and Joseph Hall respectfully sheweth, that there is due unto them the sum of twenty dollars, for services as surveyors in two surveys on the brig Gracchus, as will appear by the affidavit and account herewith filed. They therefore pray that their claim my be paid out of the amount of the proceeds of sale of said vessel now in the registry of this court.

WM. H. GATCHELL, for pet'rs.

BALTIMORE, July 31, 1833.

Brig Gracchus, owners, and Freeman Snow, master.

To Jesse Fearson and Joseph Hall, Dr.

To 2 surveys on the hatches, dunnage, and stowage of the cargo of the brig Gracchus, at $5 - - - - -	$10 00
To 2 ditto on the hull, at $5 - - - - -	10 00
	$20 00

CITY OF BALTIMORE, *sct.*

On this 21st day of September, 1833, before the subscriber, a justice of the peace in and for said city, personally appears Jesse Fearson, and makes oath agreeably to law, that the within account is just and true as stated, and that he has not, nor has his co-partner, or any other person for the firm of Fearson and Hall, of which he is a partner, received any part or parcel, security, or satisfaction for the same, to his knowledge.

SAM'L. PICKERING.

Decree.

In the matter of the petition of W. G. HARRISON and others *vs.* The BRIG GRACCHUS. } In the District Court of the United States for the District of Maryland.

Upon the petition of Jesse Fearson and Joseph Hall in the above matter, it is by Elias Glenn, judge, and by the authority of this court ordered, that the marshal of the said district pay out of any moneys which may remain in his hands arising from the sales of said vessel, the sum of twenty dollars for surveys made by them on said vessel and her cargo, as per their bill and affidavit of file in this court.

Given under my hand, this 4th day of December, 1833.

ELIAS GLENN, D. J.

Receipt.

Received of the marshal (Thomas Finley, Esq.,) twenty-six dollars in full of the claim and costs in this case.

WM. H. GATCHELL.

Letter from the President of the office to W. Howell and Son.

OFFICE OF THE MARYLAND INSURANCE CO.

Baltimore, February 5th, 1834.

Messrs. WM. HOWELL and SON,

Gentlemen:—We have no objection to your receiving the amount which remains in the hands of the marshal from the sale of the brig Gracchus, with the distinct understanding, that it shall not prejudice the rights of either party with respect to the insurance on the said vessel.

We remain, very respectfully,
Your most obed't servant,
JOSEPH A. WALLACE, President.

February 21st, 1834. Received of P. Moore four hundred and three dollars eighty-eight cents, balance of proceeds of brig Gracchus.

J. GLENN.

DISTRICT COURT OF THE UNITED STATES,
For the Maryland District,
September Term, 1833.

WILLIAM G. HARRISON, *vs.* The BRIG GRACCHUS. } Decree of condemnation, sale ordered after 15 days' notice.

Marshal's sale at the exchange in virtue of the decree in the above stated case, 19th September, 1833.

To William Howell & Son, brig Gracchus, with her tackle, apparel and furniture, - - - - - $4750 00

Charges.

Paid for advertising in 4 papers, - - -	5 00	
Wharfage 53 days, - - - - -	53 00	
Watching, washing decks, &c. 45 days, - -	50 62	
Jillard & Lemaitre for unbending sails, - -	2 33	
Custody fee 52 days, - - - - -	78 00	
Commission on sale, - - - - -	65 62	
Paid keeper of the exchange, - - - -	1 00	$255 57
Amount bro't forward, - - - -		$4494 43
Costs, - - - - - - -	$9 25	
Clerk's commission, - - - - -	$23 75	
Paid Harrison, Brown & Co., - - -	$3944 33	
Paid Freeman Snow, - - - - -	82 01	
Paid J. Fearson & J. Hall, and costs, - - -	26 00	
Paid Wm. Howell & Son, - - - -	403 88	$4489 22
Balance, - - - - - -		$5 21

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name and affix the seal of the said district court, this thirteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

[SEAL.] THOS. SPICER, Clerk Circuit Court.

Capt. Snow's Evidence.

And the plaintiffs further to support the issue on their part, gave in evidence by Captain Snow, that he left New Orleans for Baltimore, with said brig, having on board 200 barrels of pork, and 58 hogsheads of sugar, and other arlicles, about the middle of the day of Saturday the 23d of March, intending to proceed to Sheppard's Plantation on the river, about 33 miles below New Orleans, to take in the residue of her cargo, for his said voyage to Baltimore ; that at the English Turn, about 22 miles from New Orleans, he attempted to come to anchor, and in so doing, lost the small bower anchor, then dropped his best bower, which brought up the brig ; that next morning, being the 24th, in proceeding with said brig, she struck on a log, broke the rudder pintles, when she fell off, and went on shore about 7 o'clock, A. M.; that he then made a signal for a steam-boat in sight; that on coming to his assistance, she attempted to haul the brig off, when the hause parted ; that he then found that the brig was making water very fast ; and

sent to a neighbouring plantation for help; that the owner, Mr. Saul, came on board, and brought about 30 negroes; they commenced pumping, and discharging the cargo on board the steam-boat; after discharging all of the pork, and greater part of the sugar, they succeeded in freeing the brig at about 5 P. M. of the same day. She was then got off, and proceeded to the city of New Orleans, where she arrived the same night at about 11 o'clock, the brig continuing during all the period of her passage to New Orleans, to leak very fast, so that they were compelled to keep both pumps constantly going, and for that purpose to take in the brig eight of the aforesaid slaves to New Orleans. That next day, being Monday, the 25th, he heard that the captain of the steam-boat claimed a salvage of 50 per cent. on vessel and cargo, and intended to libel for it.

On Wednesday the 27th, the brig was taken across the river to a shipyard, the libel was not served till Wednesday the 26th, or Thursday the 27th, he thinks it was Thursday, but he is certain it was after she was taken across the river; that she continued at the shipyard, in the custody of the marshal, and was hove out some days afterwards. That the letter written by witness on the 25th March, was grounded on the information he received on that day; it was written in the afternoon; he heard on Tuesday the 26th, that a libel had been filed. The witness further stated that he had an offer for the brig, before the disaster, at New Orleans, of $8,500, cash, and was afterwards asked if he would take $9000, which he refused; that he had been verbally authorized by the plaintiffs, to sell her for $10,000; that as she lay at the wharf before the repairs, she would not have sold for more than $4500, or $5000, cash. That the Gracchus left New Orleans after the repairs were completed, for Baltimore, on the 3d day of July, succeeding her disaster; lost main-top mast at sea, afterwards the fore-top mast, and all its sails; came home under jury-top mast; that the hull of the vessel was not injured; that the damage sustained upon the last voyage to Baltimore, amounted to $1500, or $2000, as he estimates it. That he was present at the sale of the brig Gracchus, by the marshal; that she was sold at public auction, at the Exchange in Baltimore, during business hours, in the condition in which she came in, without any repairs, to William Howell and Son. The Underwriter on the cargo at New Orleans, and he the witness, offered the salvors twelve dollars per hour, being the highest price that had ever been offered at New Orleans, for similar services. The steam-boat had charge of the vessel and cargo, for fifty hours; and the said witness further stated on cross examination, that Mr. Dance, one of the consignees of the brig had told him that he (Mr. Dance) and the underwriter on the cargo, had offered the salvors the highest price that had ever been offered for such services; that Mr. Sheppard and Mr. Dance told him that the claimants of the salvage were going to libel the brig, and that on Monday the 25th day of March 1833, the captain of the steam-boat refused to let witness have a barrel of his own bread out of the steam-boat; that he had written his letter of the 25th March, in the afternoon of that day: that he was told before he wrote that letter, that the brig would be libelled, but he never knew that she was libelled until she was taken possession of by the marshal, which was on Wednesday evening, or Thursday morning. The witness further stated that he received no letter from the owners of the vessel, nor from any other person during the absence of the brig. The same witness further stated, that when he wrote the letter of the 25th March, he did not know that the owners of the steam-boat, and Mr. Saul, had applied to the court, to libel the brig for salvage.

Evidence of Jno. B. Howell.

And the plaintiffs, further to support the issue on their part, gave in evidence by John B. Howell, that at the sale of the brig Gracchus, by the marshal, he purchased on his own account for $4750, and that plaintiffs have never had any interest in said purchase. That he thinks the brig was irreparably injured by the accident referred to in Captain Snow's letter of the 25 March; that is, he thinks she could never be made as good as she was before; he considered her so materially injured, that her reputation has been seriously impaired, and that higher premiums have been asked by all the offices, ever since on the brig; that the defendants have, he thinks, uniformly declined risks on her, though they may have insured cargo in her. The brig apparently was a very fair vessel. The same witness stated on cross examination, that he did not examine the brig, that she was not hove out until after the sale, and that he merely looked at her, to form an estimate as to her worth. That the time of the mail from New Orleans to Baltimore, is from twelve to twenty days, and that the letter of the 25th March, 1833, was brought to Baltimore by Captain Bradlie, one of the plaintiffs, and that letter, and all other papers, were handed to the defendants by him, the witness, as soon as he received them.

The defendants, to support the issue on their part, then gave in evidence, the letter of the defendants to William Howell and Son, the agents of the plaintiffs, dated September 24th 1833.

Letter from the Defendants to W. Howell and Son, dated 24 Sept. 1833.

OFFICE OF THE MARYLAND INS. CO.
BALTIMORE, 24 September 1833.

MESSRS. WILLIAM HOWELL AND SON.

Gentlemen:—We have examined the statements of general and particular average, and the accounts relating thereto, which you handed us some days ago, respecting the expenses incurred on the brig Gracchus at New Orleans. Although some of the charges are of a description for which the Company is not liable, by the terms of their policy; yet wishing to act liberally in the case, we have agreed to admit every item in the accounts, and the different amounts will be as follows:

General average, as stated at New Orleans in full -	$1245 07
Particular average, whole amount of expenses $1690 15, of which, after usual deduction of new for old, on the sum of $1503 44 our proportion is, - . - -	$1164 04
	$2409 11

In payment of which sum, we now hand you enclosed, your premium Note No. 13703 due 22|25 May last - -	$401 00
Our endorsed check No. 1746 on the Bank of Baltimore -	$2008 11
	$2409 11

And we will thank you to send us the policy with a receipt for the same. If you find that any charge over and above what is already made in the accounts you have now rendered, has been paid at New Orleans in order to raise

the funds on bottomry, we will pay you our full proportion of the same, upon being made acquainted with the amount.

We remain very respectfully, your most obt. serv'ts.

JOSEPH A. WALLACE, President.

And the reply thereto.

Letter from W. Howell & Son to the Defendants, of 24th Sept. 1833.

BALTIMOR, September 24th, 1833.

JOSEPH A. WALLACE, Pres. Md. Ins. Co.

Dear Sir :—We have just received yours of this date covering a statement of what *you* conceive to be due the late owners of the brig Gracchus, also the premium note and a check for the sum of $2008 11-100; we beg leave to return the premium note and check, because, as agents of the unfortunate owners, we should do them great injustice to make such a settlement; our opinion is, that in law and equity they have a claim *for total loss.* If you think proper to pay $2008 11-100 on *account*, leaving the question of partial or total loss to be settled by an amicable suit at law—we have no objection.

Very respectfully, your obt. servants,

Signed WM. HOWELL & SON.

And then gave in evidence the following orders for insurance.

Order for Insurance, 19th Sept., 1834.

William Howell and Son want insurance for their own account on the copper fastened and coppered brig Gracchus, William Oliver, master, valued at $12,000, at and from Rio de Janeiro to Baltimore; she was expected to sail about the 10th August.

Baltimore, September 19th, 1834.

1½ per cent.

Agreed WM. HOWELL & SON.

Order for Insurance, Nov. 4, 1834.

Neptune Insurance Co.

William Howell & Son want insurance on the brig Gracchus, William Oliver, master, valued at $10,000, at and from Baltimore to Gibraltar, with liberty of Malaga, and touching at Gibraltar returning, and to and from thence to Baltimore.

Baltimore, November 4th, 1834.

2½ per cent. flat.

Agreed WM. HOWELL & SON.

Order for Insurance, 6th January, 1834.

Neptune Insurance Co.

William Howell & Son want insurance on the brig Gracchus, William Oliver, master, valued at $10,000, for six months, commencing on the 26th December, 1833, at noon; if on a passage at the expiration of the term, the risk to continue at same rate of premium until her arrival at her port of

destination. The Gracchus has made one voyage to New York, New Orleans and back, copper fastened and coppered, and as well fitted and found as any vessel belonging to the port.

Baltimore, January 6th, 1834.

4 per cent.

Accepted WM. HOWELL & SON.

American Insurance Co.

Evidence of Samuel Thompson.

And then gave in evidence by Samuel T. Thompson that he is the Secretary of the Baltimore Insurance Company, and has been so for several years; that the invariable and uniform usage of the underwriters in the city of Baltimore, is to make a deduction of one third new for old in cases where vessels insured with them have been repaired; that he never heard of an exception to the usage but in one case, which occurred some years ago in the Baltimore Insurance Office, while Mr. David Winchester was president; that was the case of a new vessel on her first voyage, and the deduction was not made; and witness also stated that he never knew or heard of an adjustment of a partial loss of a vessel on her first voyage except in the said case at the Baltimore Insurance Office; and the witness referred to a note made by Mr. Winchester who was for many years president of said company, and esteemed to be a skillful and experienced officer, in the edition of 1 Phil. on Insur. belonging to said office, in relation to that author remarks on said case—

Remarks of D. Winchester.

"The author is mistaken; the adjustment in the case referred to was made expressly on the ground of 'first voyage,' and on the authority of Stevens.

D. W."

Evidence of T. B. Adair.

And further gave in evidence by Thomas B. Adair, that he is acquainted with insurance and the usages of underwriters in the city of Baltimore, and that he has been a director of one of the insurance companies; that the deduction of one-third new for old in case of repairs, is always made according to the uniform and invariable usage among underwriters in the city of Baltimore; and that he has never heard of any exception to the rule in the case of a new vessel on her first voyage, but had never heard of a case of adjustment of a loss on a vessel on her first voyage; that he believes a vessel injured as the Gracchus is represented to him to have been, might be made as good as she was before.

Evidence of Captain Tucker.

And then gave in evidence by Captain Wm. A. Tucker that he has been a director in the Baltimore Office for years; that the custom in Baltimore is to deduct one third new for old, thinks he has heard of only one different case, and that was compromised; but said witness also stated that he had never heard of any other case of an adjustment of a partial loss on a vessel on her first voyage. The same witness stated upon his cross examination,

that a vessel having her keel injured as the Gracchus is described to have been, would not be better after repair than she was before the injury.

Further evidence of Captain Snow.

And the said witness, Captain Snow, being further examined gave further evidence, that he sailed from Baltimore to New York on the 3d day of December, 1832, laden with flour, castings, and gas pipes; that the brig was not chartered, but was up as a general ship; that Mr. Tyson or Mr. Ellicott shipped the gas pipes; but he does not recollect the other shippers. That Mr. Bradlie, one of the plaintiffs, was with him in New York, and he there gave witness his orders as to the employment of the vessel after she should discharge her cargo at New Orleans; that she went from New York to New Orleans with a cargo of paving stones, furniture, and dry goods; that he was detained at New York for freight, and left there for New Orleans the latter part of January, 1833; that at New Orleans he procured a new freight of pork and sugar; the pork belonged to a navy contractor, and the sugar to Mr. Sheppard; that he would have taken a freight for Europe if he could have procured one; that he was told by Mr. Bradlie that if compelled to take a low freight, then to come to Baltimore or Alexandria in preference. That he had hopes of getting a freight to Europe and preferred to do so, and intended to do so if it would be more advantageous to the owners, when Mr. Dance told him he must not go except to Baltimore, unless the bottomry bond was paid; and he then took freight for Baltimore; that Mr. Dance was the lender on bottomry, and that without such loan he could not have discharged the salvage and paid the expenses of the repairs of the brig.

The said witness further stated, that although he had not on board all the cargo of sugar that he intended bringing to Baltimore when he sailed from New Orleans, on the 23d March, 1833, he did nevertheless clear out his vessel at New Orleans at the custom house, and did not intend to return there for any purpose after he should have obtained the balance of his cargo in the river below New Orleans; nor did he understand that it was legally necessary that he should do so; and that he had not signed the bills of lading for the said residue of cargo so to be taken.

Evidence of deputy collector.

And it was further given in evidence by Dr. McCulloh, the deputy collector in the port of Baltimore, and who had been in that office for many years, that in such a case it is the practice in the several custom houses in the United States to give a vessel her clearance, marking in the manifest only the cargo actually in her when she sails from the particular port of clearance, and that if other cargo is taken in at any intermediate place between the port of clearance and that of destination where there is no officer of the customs, such cargo is only required to be notified to the collector of the port of destination, neither the vessel nor master being expected to return to the port of clearance to obtain any other papers, but that in such a case it is usual for the master to note on the manifest the kind and quantity of cargo so expected to be taken on board after the clearance.

The defendants also proved that the salvage and repairs amounted to $2935 22, as follows:

Salvage and costs - - -	$1245 07	
Repairs - - - -	1690 15	$2935 22

Whereupon the defendants by their counsel prayed the court to instruct the jury as follows:

BRADLIE & GIBBONS
vs.
THE MARYLAND INSURANCE COMPANY. } Defendants' Prayers.

Defendants' 1st Prayer.

1st. The defendants by their counsel, pray the court to instruct the jury that the notice of abandonment of the 22d April, 1833, and the accompanying letter from Captain Snow of the 25th of March, as given in evidence by the plaintiffs, do not show or disclose facts which in law justifies the offer to abandon then made; and therefore that in the absence of all evidence, that said abandonment was accepted by the defendants, the plaintiffs are entitled to recover only for a partial loss.

2d Prayer.

2d. That if the said notice of abandonment was sufficient, still the jury ought to find a verdict for a partial loss only, unless they shall believe from the evidence, that the Gracchus suffered damage from the accident that befel her on the 24th March, 1833, to more than one half the sum at which she was valued in the policy; and that in estimating said damage, the jury ought to take the cost of her repairs only, deducting one-third therefrom, as in the case of adjusting a partial loss.

3d Prayer.

3d. That if the said abandonment was sufficient as is assumed in the preceding prayer, still the jury ought to find a verdict for a partial loss only, unless they shall believe upon the evidence, that the damage so sustained by said brig exceeded in amount one half the sum at which she was valued in the policy; and that in estimating the cost of her repairs for the purpose of ascertaining the amount of such damage, the jury are bound to deduct one third therefrom, as in the case of a partial loss.

4th Prayer.

4th. That if said abandonment was sufficient, still the jury ought to find a partial loss only, unless they shall believe that the damage as aforesaid was more than one half the value of the said brig at the time the accident happened, according to the proof of such value as given in evidence; and that in estimating the amount of such damage, the jury are to take the amounts of the general and particular averages as adjusted at New Orleans, deducting one third from the actual cost of repairs.

But the court refused to give the instruction prayed for, and gave to the jury the following instruction.

Instruction of the Court.

If the jury find from the evidence, that the Gracchus was so damaged by the disaster mentioned in the letter of Captain Snow of March 25th, 1833, that she could not be got off and repaired without an expenditure of money

to an amount exceeding half her value *at the port of New Orleans*, after such repairs were made, then the plaintiffs are entitled to recover for a total loss, under the abandonment made on the 22d day of April, 1833; and on ascertaining the amount of such expenditure, the jury must include the sum for which the brig was liable to the salvors, according to the decree of the district court of Louisiana stated in the evidence; but if the jury find that the vessel could have been got off and repaired without an expenditure of money to the amount of more than half her value, then upon the evidence offered the plaintiffs are not entitled to recover for a total loss, on the ground that the voyage was retarded or lost, nor on account of the arrest and detention of the vessel by the admiralty process issued at the instance of the salvors.

And the defendants asked leave to except to the refusal of the court to give the instructions, and to the opinion actually given by the court in their instructions to the jury, and that the court here would sign and seal this their bill of exceptions according to the act of Congress in such case made and provided, which is accordingly done this sixteenth day of November, 1836.

R. B. TANEY, [SEAL.]
U. S. HEATH, [SEAL.]

Plaintiffs' 1st Exception.

BRADLIE and GIBBONS
vs.
THE MARYLAND INSURANCE COMPANY. } Plaintiffs' 1st Exception.

1. And the plaintiffs, by their counsel, except to the opinion of the court and their instruction to the jury as given in the defendants' exception, all of which exception is to be considered as making a part of this exception, also prayed leave to except, and that the court would sign and seal this the plaintiffs' first bill of exception, which is done accordingly, this sixteenth day of November, 1836.

R. B. TANEY, [SEAL.]
U. S. HEATH, [SEAL.]

Plaintiffs' 2d Exception.

2. And the plaintiffs upon the evidence stated in defendants' exception all of which is to be considered as forming a part of this exception, prayed the court to instruct the jury, as follows:

The plaintiffs pray the court to direct the jury, that in this cause the insured by their letter of the 22 April, authorized and required the proper expenditures to be made upon the vessel for which said underwriters are liable under their policy; that no funds being supplied by them in New Orleans to meet this loss, and the salvage and repairs having been paid for by money raised upon respondenture upon the vessel; if the jury shall find that said vessel, under the lien of this bond came to Baltimore, and the defendants were then apprised of the existence of such respondenture, and were also informed of the existence of the proceedings thereupon against said vessel, and they neglected to pay so much thereof as they ought to have paid to relieve said vessel, and omitted to place her in the hands of the owners discharged of so much of such bottomry as the underwriters

were liable for, and in consequence thereof, said vessel was libelled and condemned and sold, and thereby wholly lost to the plaintiffs: then the plaintiffs are entitled to recover for the whole value of the vessel.

But the court refused to grant the said prayer, and to that refusal the plaintiffs by their counsel prayed leave to except, and that the court would sign and seal this the plaintiffs' second exception, which is done accordingly this sixteenth day of November, 1836.

R. B. TANEY, [SEAL.]
U. S. HEATH, [SEAL.]

Afterwards, to wit, on the 16th day of November, in the year of our Lord 1836, the aforesaid Bradlie and Gibbons, by their attorneys aforesaid, produced to the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington, on the second Monday in January next, which said writ of error is in the words and of the tenor following, to wit:

Writ of Error.

THE UNITED STATES OF AMERICA, ss.

The President of the United States, to the Judges of the Circuit Court of the United States for the District of Maryland, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between Isaac Bradlie and John Gibbons, plaintiffs, and the Maryland Insurance Company defendants, a manifest error hath happened, to the great damage of the said Isaac Bradlie and John Gibbons, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-six.

THO. SPICER, Clk. Circuit Court.

Issued this 16th day of November, 1836.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid so as aforesaid rendered, with all

things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States, accordingly.

Bond.

Know all men by these presents, that we, John B. Howell and William Howell Bruff, of the city of Baltimore, are held and firmly bound unto the Maryland Insurance Company in the just and full sum of five hundred dollars, current money of the United States, to be paid to the said Maryland Insurance Company, their certain attorney, successors or assigns, to which payment well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents; sealed with our seals, and dated this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first day of November, in the year of our Lord one thousand eight hundred and thirty-six, a certain Isaac Bradlie and John Gibbons, by the judgment of the same court recovered against the said Maryland Insurance Company the sum of three thousand four hundred and eighty-nine dollars and twenty-two cents damages and costs of suit, in that behalf laid out and expended: And whereas the said Isaac Bradlie and John Gibbons have sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said Maryland Insurance Company, citing and admonishing them to be and appear at a Supreme Court of the United States to be held at the city of Washington, on the second Monday in January next:

Now the condition of the above obligation is such, that if the said Isaac Bradlie and John Gibbons shall well and truly prosecute with effect their said writ of error, and pay to the said Maryland Insurance Company the damages, costs and charges which may be awarded by the said Supreme Court in case they shall fail to make their plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue.

JNO. BROWN HOWELL, [SEAL.]
WM. HOWELL BRUFF, [SEAL.]

Signed, sealed and delivered in presence of
WM. H. FRAZIER.

I believe this bond to be good.
D. STEWART, att'y for def'ts.

Approved
R. B. TANEY.

Citation.

The United States of America, to the Maryland Insurance Company, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein Isaac Bradlie and John Gibbons are plaintiffs, and the Maryland Insurance Company are defendants, to shew

cause, if any there be, why the judgment rendered against the said Maryland Insurance company in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this sixteenth day of November, 1836.

R. B. TANEY, [SEAL.]

[SEAL.] In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven.

THO. SPICER, Clerk Circuit Court.